6th Biennial Conference ECPR Standing Group on Regulatory Governance
Tilburg University, the Netherlands, 6-8 July 2016

PANEL PROPOSAL:

Collaborative regulatory governance in the field of morality policies

Panel Chairs: Eva-Maria Euchner, Caroline Preidel, and Christoph Knill (all University of Munich)

Discussants: Sandra Eckert (University of Frankfurt) and Eva Thomann (University of Mannheim)

Panel Description:

The study of "morality policies" represents a relatively new area of policy analysis. Typical examples are the regulation of euthanasia, religious education, artificial reproduction technologies (ART), and prostitution. Given the framing of morality conflicts in terms of first principles, compromises around these issues are less feasible. State actors are not willing to surrender and abandon their morality values. However, instead of choosing clear policy solutions, they tend to take non-decision, define only vague policy measures, or delegate the conflict resolution to other public, semi-public or private areas, such as expert commissions, courts, medical associations or religious communities (cf. Meier 1994, 14). For example, throughout Europe, national medical associations define explicit rules and sanctions for the provision of euthanasia and ART; these rules and sanctions serve to offset the vague public policies and legal grey zones left ambiguous by the state (cf. Euchner/Preidel 2014). A similar logic applies in many European countries for the case of religious education, where national religious communities are not only involved in policy implementation but also in policy formulation.
We lack studies examining in a systematic way the different modes of regulatory governance in the field of morality policies. So far most scholars limit their focus to public actors in the stage of policy formulation or decision-making (Engeli et al. 2012, Knill et al. 2015), the role of interest groups in agenda-setting (Paternotte/Tremblay 2015) or street-level bureaucrats in policy implementation (Pates/Schmidt 2009). The panel contributes to this research gap by bringing together scholars exploring the interaction between public, semi-public and private actors in morality policy regulation at different stages. We are, for instance, interested in papers tackling questions such as: Under which conditions do public actors employ collaborative regulatory styles? And when are models of self-regulation more likely? What kind of semi-public and private actors are typically involved in morality policy regulation? And which institutional and actor-specific factors are required that non-state actors take over such an important role in policy regulation?
The panel seeks to bring together theoretical as well as empirically guided papers tackling these questions. In so doing, the panel advances the research on regulatory governance and morality policies. Common concepts are examined for a new field of public policy and domestic as well as policy-specific determinants of governance modi will find new attention.

Key words: Collaborative regulatory governance, co-regulation, self-regulation, morality policies

Paper proposal 1

Title: **Collaborative governance and morality policies in Switzerland and Belgium**

Paper giver: Irina Ciornei (University of Bern)

Morality policies are a policy field upon which the secular state gained increasing authority in the past decades, redefining and reducing the role played by religious communities (especially the Catholic Church). However, several morality policy fields such as abortion, euthanasia, prostitution or religious education are far from being exclusively controlled by public authorities. Religious groups still play an important role in providing information and/or resources during the implementation of these policies. For instance, Christian churches organise information campaigns and counselling sessions in the fields of abortion and prostitution and can also fund third parties in order to provide these services. Less is known about the involvement of Muslim religious leaders in these activities. This paper analyses the processes of collaborative governance between religious groups (Catholic, Protestant and Muslim) and public authorities in the implementation of morality policies in Switzerland and Belgium. Based on expert interviews with religious community representatives, we discuss the degree of collaborative governance in three policy areas such as abortion, prostitution and religious education and to what extent church state regimes and religious group resources explain the variation.

Paper proposal 2

Title: **The role of private and non-state actors in the regulation of the morality policy on contracts on human biological materials.**

Paper giver: Enrique Santamaría (University of Groningen)

This paper analyzes the role of private actors and other non-state actors[1] in setting the boundaries between immorality (or contrariety to public policy) and social acceptability of contracts on human biological materials (e.g. tissue samples). This paper focuses on contracts on human biological materials concluded between the original donor and the first recipient of the materials. The original donor of the materials (a natural person) is always a private actor. The first recipient of the materials can be either a private actor (for example a pharmaceutical company), or a public or semi-public actor (for example a university).

Private actors are involved in the regulation of the morality policy on contracts on human biological materials in at least two ways. Firstly, contracts are means of self-regulation: private actors may regulate the use of human biological materials through contracts. These contracts can be declared invalid by courts when contrary to morality or public policy. In assessing whether or not a contract is contrary to morality or public policy, courts often make use of fundamental rights, human rights, and other general principles of law (including the international law principle according to which the human body and its parts cannot be source of financial gain). Secondly, non-state actors are involved in modes of collaborative regulatory governance, including the participation in several expert groups and procedures instituted or monitored by public actors. For example, the use of human tissue is co-regulated by the Opinion "Ethical Aspects of Human Tissue Banking" issued in 1998 by the European

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[1] The terms 'private actors' and 'non state actors' are not synonyms. For example, academics involved in legislative processes or expert committees are certainly non-state actors but not necessarily private actors.

Group on Ethics in Science and New Technologies (EGE).[2] The Opinion itself is not legally binding, however, it should be taken into account by the EU institutions in regulating this matter.

<u>Paper proposal 3</u>

Title: **Collaborative regulatory governance: The role of religious communities in the implementation of morality policies in Germany.**

Paper giver: Eva-Maria Euchner and Caroline Preidel (University of Munich)

In the course of secularization, religious communities forfeit their traditional power in shaping policy-making of morality issues. However, we lack empirical evidence regarding the phase of implementation. Following Mooney (2001), we would assume that the losers of the policy-making process regain influence in governing citizens' behavior after the legislative process as morality policy outputs are characterized by vagueness and indefinite terms. These characteristics increases the leverage for nongovernmental actors and the chances for collaborative regulatory governance or private self-regulation. More precisely, one might expect that private actors either imply their own rules or formulate in collaboration with public actors at the local level specific implementation guidelines.

Hence, the paper follows two research questions: firstly, to what extent are religious communities involved in morality policy implementation? And secondly, what are the drivers of their engagement? By drawing on literature on state-church interaction, morality policy-making, and policy implementation, we argue that the involvement of religious groups is a function of their governance capacity, mediated by their willingness to engage. The configuration of the church-state-regime constitutes the general opportunity structures for religious communities to act.

For testing this argument, we introduce a new measurement approach of religious groups' governance engagement during the phase of implementation. Furthermore, we conduct a comparative case study, focusing on different morality policies in Germany. Thereby, we contrast the governance activities of the Catholic Church, the Protestant Church and the Muslim community in the regulation of prostitution and religious education. The paper enhances the existing research on regulatory governance in three aspects: first, it explores policy fields which are traditionally steered by the state in order to maintain dominating societal values and norms; second, it provides new insights on the causes of collaborative governance; and third, the paper sheets light on novel group of non-public actors.

<u>Paper proposal 4</u>

Title: **Assisted Dying:* the need to 're-politicize' this particular morality policy.**

Paper giver: Adam McCann (University of Groningen)

On 11 September 2015, two mobilized groups demonstrated outside the Palace of Westminster, London. One group held placards that read: "Ditch the Death Bill." The other group held placards that

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[2] The EGE was set up by EU institutions in 1991 to advise the European Commission on ethical questions relating to sciences and new technologies, either at the request of the Commission or on its own initiative. Since 1991 the EGE has drawn up 23 Opinions. See http://erawatch.jrc.ec.europa.eu/erawatch/opencms/information/country_pages/eu/euorganisation/europea norg_mig_0043 (see http://www.who.int/ethics/en/ETH_TissueBanking.pdf)

* The single term 'assisted dying' is used in this study to describe both voluntary active euthanasia and assisted suicide, where the distinction between the two is not deemed relevant

read: "Give me choice over my death."[3] On 21 January 2015, two similar groups demonstrated outside the Palais Bourbon, Paris. One held placards that read: "soulager mais pas tuer." The other held placards that read: "droit de mourir dans la dignité." [4]

These public demonstrations represent tangible examples of the inherent feature of public policy on assisted dying: they represent an uncompromising conflict of first principle standpoints.[5] This paper demonstrates how in England, France and Switzerland a failure to moderate this inherent feature of public policy on assisted dying has led (and continues to lead) to a number of policy related peculiarities. Namely, it has affected (i) public policy output – the content of relevant legal rules, judicial verdicts, prosecution guidelines, and medical professional guidelines on assisted dying; (ii) public policy effect - how the aforementioned policy outputs are actually implemented and evaluated to tackle the real problems at hand; and (iii) public policy change - the willingness to reform these policy outputs in light of their effects.[6] Moreover, this paper highlights the benefits (and indeed the challenges) of the approach taken in the Netherlands; attesting the need for, inter alia, increased public-private actor interdependency not only in defining the law on assisted dying, but also in the application and enforcement of the law on assisted dying.

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[3] J. Bingham, 'Right to die: MPs reject Assisted Dying Law', *The Telegraph* (London, 11 September 2015). Available at <www.telegraph.co.uk/news/uknews/assisted-dying/11857940/Assisted-dying-vote-in-House-of-Commons.html>.

[4] See 'Fin de vie: Valls appelle les parlementaires au "rassemblement"', *Le Monde* (Paris, 21 January 2015). Available at: <www.lemonde.fr/sante/article/2015/01/21/fin-de-vie-valls-appelle-les-parlementaires-au-rassemblement_4560814_1651302.html>.

[5] An uncompromising conflict of first principle standpoints is the inherent feature of not just public policy on assisted dying but morality policies in general. See C. Mooney, 'The Politics of Morality Policy: Symposium Editor's Introduction' (1999) 27(4) *Policy Studies Journal* 675-680; C. Knill, 'The study of morality policy: analytical implications from a public policy perspective' (2013) 20(3) *Journal of European Public Policy* 312; S. Heichel, C. Knill, and S. Schmitt, 'Public policy meets morality: conceptual and theoretical challenges in the analysis of morality policy change' (2013) 20(3) *Journal of European Public Policy* 319.

[6] See Heichel, Knill and Schmitt, *ibid.*, 323-330.